

REMARKS

The specification has been amended to include an unintentionally delayed priority reference in accordance with 37 CFR § 1.55. This information has already been recognized by the Office as shown by its inclusion on the official filing receipt, a copy of which is enclosed. Thus, Applicant submits that no petition under 37 CFR § 1.78(a) or surcharge under 37 CFR § 1.17(t) is required to correct this priority claim.

The amendments to independent claims 33 and 38 were made for clarification and are fully supported by the description in the specification (e.g., page 12, line 19 to page 14, line 1; etc.).

No new matter has been added. Upon entry of this Response, claims 33-41 remain present and active in the application.

Request for Personal Interview with Examiner

If for any reason the outstanding grounds of rejection are not withdrawn in light of the remarks below, Applicant respectfully requests a personal interview with the Examiner prior to the issuance of any further rejections by the Office, in accordance with MPEP 713.01.

Claim Rejections – 35 U.S.C. § 103

The rejection of claims 33-41 under 35 U.S.C. § 103(a) as being unpatentable over *Oku et al.* (U.S. Patent No. 6,106,778) in view of *Rodriguez et al.* (U.S. Patent No. 6,228,652 B1) is respectfully traversed. *Oku et al.* and *Rodriguez et al.*, individually and in combination, fail to teach or suggest each and every element of independent claims 33 and 38.

By way of introduction, the claimed invention provides analyzers in which blood cell counting and immunoassay can be carried out by a common measurement section in order to reduce the amount of specimen collected from a patient and to enable measurement by a single small analyzer (e.g., specification, page 6, lines 1-6; page 11, lines 2-15; page 39, lines 11-23; etc.). As further explained below, each of independent claims 33 and 38 recites “an analyzing portion” that is neither taught nor suggested by

Oku et al. or *Rodriguez et al.* The recited "analyzing portion" enables blood cell counting and immunoassay to be carried out based on the fluorescence intensity and scattered light intensity detected by a detection unit.

Oku et al. describes a blood cell count/immunoassay apparatus in which blood cell counting and immunity reactions are measured by separate and distinct measuring sections (col. 2, lines 4-7)—namely, immunoassay section 10 and blood cell count section 11 (col. 3, lines 38-41).

Rodriguez et al. describes an apparatus for analyzing cells in a whole blood sample in which light scattering and fluorescence characteristics of blood cells are measured by light scatter detectors LSD1 and LSD2 and fluorescence detector FD (col. 9, lines 26-34).

Neither *Oku et al.* nor *Rodriguez et al.* teaches or suggests "an analyzing portion" configured for performing each of the specific operations recited in independent claims 33 and 38. At a minimum, and by way of example, neither *Oku et al.* nor *Rodriguez et al.* contains any teaching or suggestion of "an analyzing portion configured for... detecting agglutination degree of the fluorescent carrier particles based on the detected scattered light intensities by the second detector"—as required by independent claim 33—nor any teaching or suggestion of "an analyzing portion configured for... detecting agglutination degree of the fluorescent carrier particles based on the detected scattered light intensities of the immunoassay sample by the second detector"—as required by independent claim 38.

Inasmuch as *Oku et al.* and *Rodriguez et al.* fail to teach or suggest each and every element of independent claims 33 and 38, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of these references, individually or in combination. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Conclusion

In view of the Remarks set forth above, Applicant respectfully submits that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited.

As noted above, if for any reason the Examiner feels that the above Remarks do not put the claims in condition to be allowed, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257 in order to arrange a personal interview to discuss this case.

Respectfully submitted,



Gregory A. Zayia
Registration No. 48,059
Agent for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200